



STATE OF MONTANA REQUEST FOR PROPOSAL (RFP)

RFP Number: 115004	RFP Title: Environmental Specialist Assistance with Preparation of an Environmental Impact Statement for the CR Kendall Mine Amended Closure and Water Management Plan		
RFP Response Due Date and Time: December 05, 2014 2:00 p.m., Mountain Time		Number of Pages: 48	Issue Date: October 31, 2014

ISSUING AGENCY INFORMATION	
Procurement Officer: Vicki Woodrow	Department of Environmental Quality Phone: (406) 444-3101 Fax: (406) 444-1804 TTY Users, Dial 711
Website: http://vendor.mt.gov/	

INSTRUCTIONS TO OFFERORS		
Return Sealed Proposal to:		Mark Face of Envelope/Package with: RFP Number: 115004 RFP Response Due Date: December 05, 2014
PHYSICAL ADDRESS: Dept. of Environmental Quality Room 3 Metcalf Building 1520 East Sixth Avenue Helena, MT 59620	MAILING ADDRESS: Dept. of Environmental Quality Room 3 Metcalf Building P.O. Box 200901 Helena, MT 59620-0901	
Special Instructions:		

OFFERORS MUST COMPLETE THE FOLLOWING	
Offeror Name/Address:	<hr/> (Name/Title) <hr/>
	<hr/> (Signature) Print name and title and sign in ink. By submitting a response to this RFP, offeror acknowledges it understands and will comply with the RFP specifications and requirements.
Type of Entity (e.g., corporation, LLC, etc.)	Offeror Phone Number:
Offeror E-mail Address:	Offeror FAX Number:

OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE

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INSTRUCTIONS TO OFFERORS

It is the responsibility of each offeror to:

Follow the format required in the RFP when preparing your response. Provide responses in a clear and concise manner.

Provide complete answers/descriptions. Read and answer **all** questions and requirements. Proposals are evaluated based **solely** on the information and materials provided in your written response.

Use any forms provided, e.g., cover page, budget form, certification forms, etc.

Submit your response on time. Note all the dates and times listed in the Schedule of Events and within the document. Late proposals are **never** accepted.

The following items MUST be included in the response.
Failure to include ANY of these items may result in a nonresponsive determination.

- ☒ Signed Cover Sheet
- ☒ Signed Addenda (if appropriate) in accordance with Section 1.4.3
- ☒ Correctly executed State of Montana "Affidavit for Trade Secret Confidentiality" form, if claiming information to be confidential or proprietary in accordance with Section 2.3.2.
- ☒ In addition to a detailed response to all requirements within Sections 3, 4, and 5, offeror must acknowledge that it has read, understands, and will comply with each section/subsection listed below by initialing the line to the left of each. If offeror cannot meet a particular requirement, provide a detailed explanation next to that requirement.
- ☒ Offeror's Conflict of Interest Certificate in Affidavit Form (Appendix D)

_____ Section 1, Introduction and Instructions

_____ Section 2, RFP Standard Information

_____ Section 3.1, Background

_____ Section 4.1, State's Right to Investigate and Reject

_____ Section 6, Evaluation Process

_____ Appendix A, Standard Terms and Conditions

_____ Appendix B, Contract

_____ Appendix C, Closure Plan Proposed by CR Kendall

SCHEDULE OF EVENTS

EVENT

DATE

RFP Issue Date.....	October 31, 2014
Pre-Proposal Site Visit.....	November 13, 2014
Deadline for Receipt of Written Questions	November 17, 2014
Deadline for Posting Written Responses to the State's Website ...	November 21, 2014
RFP Response Due Date	December 05, 2014
Intended Date for Contract Award	January 09, 2015

All dates aside from the Issue Date are subject to change if necessary. When warranted, changes to the Schedule of Events will be made through Addenda to the RFP.

SECTION 1: INTRODUCTION AND INSTRUCTIONS

1.1 INTRODUCTION

The STATE OF MONTANA, Department of Environmental Quality ("State") is seeking a contractor to provide the services of an environmental specialist or specialists to assist the State in preparing an environmental impact statement (EIS) for the CR Kendall Corporation's (CR Kendall) Kendall Mine (Mine) specified herein. A more complete description of the services to be provided is found in Section 3.

Please note that there are significant changes between this Request for Proposal (RFP) and the RFP published in October 2012. Please be sure to read the RFP in its entirety before beginning development of your proposal. Resubmission of the proposal prepared for the 2012 RFP will not address the changes included in this RFP.

1.2 CONTRACT PERIOD

The contract shall be effective upon execution by both parties with the effective date being the latter of the two signatures. The contract term is for a period of 15 months. The parties may mutually agree to a renewal of this contract in two-month, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of 2 years at the State's option.

Contractor will be allowed to request once during the initial period of the contract and once annually thereafter to increase labor and/or direct costs. Such requests will comply with the requirements found in Section 5.1.1.1 5.1.1.2 of the Model Contract found in Appendix B to the RFP.

1.3 SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until an offeror is selected and announced by the procurement officer, **offerors shall not communicate with any state staff regarding this procurement, except at the direction of Vicki Woodrow**, the procurement officer in charge of the solicitation. Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is:

Procurement Officer: Vicki Woodrow
Telephone Number: 406-444-3101
Fax Number: 406-444-1804
E-mail Address: vwoodrow@mt.gov

1.4 PRE-PROPOSAL SITE VISIT SCHEDULED

An optional Pre-Proposal Site Visit will be conducted on **November 13, 2014 at 9:00 a.m.** at the mine site. Those attending the site visit should meet at the Yogo Inn, located at 211 East Main Street in Lewistown, Montana at 8:00 a.m. to caravan to the mine site. Offerors are encouraged to use this opportunity to view the mine site, ask clarifying questions, obtain a better understanding of the project, and to notify the State of any ambiguities, inconsistencies, or errors discovered upon examination of this RFP. All responses to questions during the site visit will be oral and in no way binding on the State. Participation in the Pre-Proposal Site Visit is optional; however, it is advisable that all interested parties participate. Official questions posed under this RFP must be in accordance with Section 1.5.2 noted below.

1.5 REQUIRED REVIEW

1.5.1 Review RFP. Offerors shall carefully review the entire RFP. Offerors shall promptly notify the procurement officer identified above via e-mail or in writing of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover. In this notice, the offeror shall include any terms or requirements within the RFP that preclude the offeror from responding or add unnecessary cost. Offerors shall provide an explanation with suggested modifications. The notice must be received by the deadline for receipt of inquiries set forth below. The State will determine any changes to the RFP.

1.5.2 Form of Questions. Offerors having questions or requiring clarification or interpretation of any section within this RFP must address these issues via e-mail or in writing to the procurement officer listed above on or before close of business on **November 17, 2014**. Offerors are to submit questions using the Vendor RFP Question and Answer Form available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-3101. Clear reference to the section, page, and item in question must be included in the form. Questions received after the deadline may not be considered.

1.5.3 State's Response. The State will provide a written response by **November 21, 2014**, to all questions received by the deadline noted above. The State's response will be by written addendum and will be posted on the State's website with the RFP at <http://svc.mt.gov/gsd/OneStop/SolicitationDefault.aspx> by the close of business on the date listed. Any other form of interpretation, correction, or change to this RFP will not be binding upon the State. **Offerors shall sign and return with their RFP response an Acknowledgment of Addendum for any addendum issued.**

1.6 GENERAL REQUIREMENTS

1.6.1 Acceptance of Standard Terms and Conditions/Contract. By submitting a response to this RFP, offeror accepts the standard terms and conditions and contract set out in Appendices A and B, respectively. Much of the language included in the standard terms and conditions and contract reflects requirements of Montana law.

Offerors requesting additions or exceptions to the standard terms and conditions, contract terms, shall submit them to the procurement officer listed above by the date in Section 1.4.2. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. The State reserves the right to address nonmaterial requests for exceptions to the standard terms and conditions and contract language with the highest scoring offeror during contract negotiation.

The State shall identify any revisions to the standard terms and conditions and contract language in a written addendum issued for this RFP. The addendum will apply to all offerors submitting a response to this RFP. The State will determine any changes to the standard terms and conditions and/or contract.

1.6.2 Resulting Contract. This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer (if any), and any clarification question responses shall be incorporated by reference in any resulting contract.

1.6.3 Mandatory Requirements. To be eligible for consideration, an offeror **must** meet all mandatory requirements as listed in Sections 3 and 4. The State will determine whether an offeror's proposal complies with the requirements. Proposals that fail to meet any mandatory requirements listed in this RFP will be deemed nonresponsive.

1.6.4 Understanding of Specifications and Requirements. By submitting a response to this RFP, offeror acknowledges it understands and will comply with the RFP specifications and requirements.

1.6.5 Offeror's Signature. Offeror's proposal must be signed in ink by an individual authorized to legally bind the offeror. The offeror's signature guarantees that the offer has been established without collusion. Offeror shall provide proof of authority of the person signing the RFP upon State's request.

1.6.6 Offer in Effect for 120 Calendar Days. Offeror agrees that it may not modify, withdraw, or cancel its proposal for a 120-day period following the RFP due date, or receipt of best and final offer, if required.

1.7 SUBMITTING A PROPOSAL

1.7.1 Organization of Proposal. Offerors must organize their proposal into sections that follow the format of this RFP. Proposals should be bound, and must include tabbed dividers separating each section. Proposal pages must be consecutively numbered.

All subsections not listed in the "Instructions to Offerors" on page 3 require a response. Restate the section/subsection number and the text immediately prior to your written response.

Unless specifically requested in the RFP, an offeror making the statement "Refer to our literature..." or "Please see www.....com" may be deemed nonresponsive or receive point deductions. If making reference to materials located in another section of the proposal, specific page numbers and sections must be noted. **The Evaluator/Evaluation Committee is not required to search through the proposal or literature to find a response.**

The State encourages offerors to use materials (e.g., paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content. Offerors are encouraged to print/copy on both sides of each page.

1.7.2 Failure to Comply with Instructions. Offerors failing to comply with these instructions may be subject to point deductions. Further, the State may deem a proposal nonresponsive or disqualify it from further consideration if it does not follow the response format, is difficult to read or understand, or is missing requested information.

1.7.3 Multiple Proposals. Offerors may, at their option, submit multiple proposals. Each proposal shall be evaluated separately.

1.7.5 Copies Required and Deadline for Receipt of Proposals. Offerors must submit **one original proposal and five copies** to the Department of Environmental Quality. In addition, offerors must submit one electronic copy on compact disc (CD) or universal serial bus (USB) flash drive in Microsoft Word or portable document format (PDF). If any confidential materials are included in accordance with the requirements of Section 2.3.2, they must be submitted on a separate CD or USB flash drive. Facsimile responses to this RFP **will not** be accepted.

EACH PROPOSAL MUST BE SEALED AND LABELED ON THE OUTSIDE OF THE PACKAGE clearly indicating it is in response to RFP 115004. ***Proposals must be received at the reception desk of the Office of Financial Services, Room 3 of the Metcalf Building by 2:00 p.m., Mountain Time, December 05, 2014. Offeror is solely responsible for assuring delivery to the reception desk by the designated time.*** Facsimile responses will not be accepted under this RFP.

1.7.6 Late Proposals. ***Regardless of cause, the State shall not accept late proposals. Such proposals will automatically be disqualified from consideration.*** Offeror may request the State return the proposal at offeror's expense or the State will dispose of the proposal if requested by the offeror. (See Administrative Rules of Montana (ARM) 2.5.509.)

1.8 COSTS/OWNERSHIP OF MATERIALS

1.8.1 State Not Responsible for Preparation Costs. Offeror is solely responsible for all costs it incurs prior to contract execution.

1.8.2 Ownership of Timely Submitted Materials. The State shall own all materials submitted in response to this RFP.

SECTION 2: RFP STANDARD INFORMATION

2.1 AUTHORITY

The RFP is issued under 18-4-304, Montana Code Annotated (MCA) and ARM 2.5.602. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. The State shall use only the evaluation criteria outlined in this RFP.

2.2 OFFEROR COMPETITION

The State encourages free and open competition to obtain quality, cost-effective services and supplies. The State designs specifications, proposal requests, and conditions to accomplish this objective.

2.3 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

2.3.1 Public Information. Subject to exceptions provided by Montana law, all information received in response to this RFP, including copyrighted material, is public information. Proposals will be made available for public viewing and copying shortly after the proposal due date and time. The exceptions to this requirement are: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; and (3) other constitutional protections. See 18-4-304, MCA. The State provides a copier for interested parties' use at \$0.10 per page. The interested party is responsible for the cost of copies and to provide personnel to do the copying.

2.3.2 Procurement Officer Review of Proposals. Upon opening the proposals in response to this RFP the procurement officer reviews the proposals for information that meets the exceptions in Section 2.3.1, providing the following conditions have been met:

- Confidential information (including any provided in electronic media) is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Offerors shall pay all of its legal costs and related fees and expenses associated with defending a claim for confidentiality should another party submit a "right to know" (open records) request.

2.4 CLASSIFICATION AND EVALUATION OF PROPOSALS

2.4.1 Initial Classification of Proposals as Responsive or Nonresponsive. The State shall initially classify all proposals as either "responsive" or "nonresponsive" (ARM 2.5.602). The State may deem a proposal nonresponsive if: (1) any of the required information is not provided; (2) the submitted price is found to be excessive or inadequate as measured by the RFP criteria; or (3) the proposal does not meet RFP requirements and specifications. The State may find any proposal to be nonresponsive at any time during the procurement process. If the State deems a proposal nonresponsive, it will not be considered further.

2.4.2 Determination of Responsibility. The procurement officer will determine whether an offeror has met the standards of responsibility consistent with ARM 2.5.407. An offeror may be determined nonresponsible at any time during the procurement process if information surfaces that supports a nonresponsible determination. If an offeror is found nonresponsible, the procurement officer will notify the offeror by mail. The determination will be made a part of the procurement file.

2.4.3 Evaluation of Proposals. An evaluator/evaluation committee will evaluate all responsive proposals based on stated criteria and recommend award to the highest scoring offeror. The evaluator/evaluation committee may initiate discussion, negotiation, or a best and final offer. In scoring against stated criteria, the evaluator/evaluation committee may consider such factors as accepted industry standards and a comparative evaluation of other proposals in terms of differing price and quality. These scores will be used to determine the most advantageous offering to the State. If an evaluation committee meets to deliberate and evaluate the proposals, the public may attend and observe the evaluation committee deliberations.

2.4.4 Completeness of Proposals. Selection and award will be based on the offeror's proposal and other items outlined in this RFP. Proposals may not include references to information such as Internet websites, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion, negotiation, or best and final offer, if requested, will not be considered, will have no bearing on any award, and may result in the offeror being disqualified from further consideration.

2.4.5 Opportunity for Discussion/Negotiation and/or Oral Presentation/Product Demonstration. After receipt of proposals and prior to the recommendation of award, the procurement officer may initiate discussions with one or more offerors should clarification or negotiation be necessary. Offerors may also be required to make an oral presentation and/or product demonstration to clarify their RFP response or to further define their offer. In either case, offerors should be prepared to send qualified personnel to Helena, Montana, to discuss technical and contractual aspects of their proposal. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

2.4.6 Best and Final Offer. Under Montana law, the procurement officer may request a best and final offer if additional information is required to make a final decision. The State reserves the right to request a best and final offer based on price/cost alone. Please note that the State rarely requests a best and final offer on cost alone.

2.4.7 Evaluator/Evaluation Committee Recommendation for Contract Award. The evaluator/evaluation committee will provide a written recommendation for contract award to the procurement officer that contains the scores, justification, and rationale for the decision. The procurement officer will review the recommendation to ensure its compliance with the RFP process and criteria before concurring with the evaluator's/evaluation committee's recommendation.

2.4.8 Request for Documents Notice. Upon concurrence with the evaluator's/evaluation committee's recommendation, the procurement officer will request from the highest scoring offeror the required documents and information, such as insurance documents, contract performance security, an electronic copy of any requested material (e.g., proposal, response to clarification questions, and/or best and final offer), and any other necessary documents. Receipt of this request does not constitute a contract and **no work may begin until a contract signed by all parties is in place.** The procurement officer will notify all other offerors of the State's selection.

2.4.9 Contract Execution. Upon receipt of all required materials, a contract (Appendix B) incorporating the Standard Terms and Conditions (Appendix A), as well as the highest scoring offeror's proposal, will be provided to the highest scoring offeror for signature. The highest scoring offeror will be expected to accept and agree to all material requirements contained in Appendices A and B of this RFP. If the highest scoring offeror does not accept all material requirements, the State may move to the next highest

scoring offeror, or cancel the RFP. Work under the contract may begin when the contract is signed by all parties.

2.5 STATE'S RIGHTS RESERVED

While the State has every intention to award a contract resulting from this RFP, issuance of the RFP in no way constitutes a commitment by the State to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP (18-4-307, MCA);
- Reject any or all proposals received in response to this RFP (ARM 2.5.602);
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP that would not have significant impact on any proposal (ARM 2.5.505);
- Not award a contract, if it is in the State's best interest not to proceed with contract execution (ARM 2.5.602); or
- If awarded, terminate any contract if the State determines adequate state funds are not available (18-4-313, MCA).

SECTION 3: SCOPE OF SERVICES

To enable the State to determine the capabilities of an offeror to perform the services specified in the RFP, the offeror shall respond to the following regarding its ability to meet the State's requirements.

All subsections of Section 3 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

NOTE: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found nonresponsive or be subject to point deductions.

3.1 Background

The State is seeking a third-party contractor to assist the State in preparing an EIS for the Kendall Mine. A summary of the closure plan proposed by CR Kendall is described in Appendix C. The EIS must meet the requirements of MEPA.

The State is soliciting detailed work proposals to address issues identified below in Section 3.2, others identified during previous scoping, and any others identified during the environmental review process. The successful contractor will begin work immediately upon approval of a contract agreement. The contractor will be responsible directly to, and is expected to work closely with, the State in reviewing the operating permit amendment application and drafting and assembling the EIS and ensuring that proper public participation is provided and all appropriate concerns are addressed in the EIS.

The CR Kendall operating permit amendment application contains basic information about the closure plan proposal and can be viewed at <http://deq.mt.gov/hardrock/default.mcp.x>.

3.2 Contents of Proposals

Proposal submitted under this RFP must contain the following elements:

3.2.1 An explanation of the offeror's role in working with the State in terms of reviewing the operating permit amendment application and preparing the EIS. Specific emphasis should be placed on team organization, communication, and coordination.

3.2.2 Conflict of Interest Statements (Appendix D as noted in Section 4.2.6).

3.2.3 An annotated outline of the EIS.

3.2.4 A preparation plan, including format, schedule, and administrative record, for developing the EIS, using the information provided in this Section for general guidance. Specifically address those special concerns identified or anticipated.

3.2.5 An explanation of how to identify alternatives that are appropriate for inclusion in the EIS and the scope of analysis needed for evaluation of the direct, secondary, and cumulative impacts.

3.2.6 A list of other planned and existing documents and how they would be used in the EIS.

3.2.7 Specific management and staff, percentage of time each will spend on the project, and resumes. Clear, concise commitments of personnel must be provided in the work proposal. The work proposal shall describe how present and projected workloads for other projects the offeror is or may be

involved in could limit expeditious completion of the EIS. Include resumes and qualifications as well as project-related experience of each individual on the offeror's project team (see 4.2.3 and 4.2.6).

3.2.8 Estimated cost to prepare a camera-ready copy of texts described in Section 3. The proposal should estimate staff hours, labor rates, individual and total labor costs, and other direct costs such as word processing, graphics, photocopying, travel, and per diem.

Travel budgets are limited to state rates for travel and per diem. The current rates are as follows:

	In-State Rates	Out-of-State Rates
Meals		
Breakfast	\$5.00	\$7.00
Midday	\$6.00	\$11.00
Evening	\$12.00	\$23.00
Lodging	Applicable Federal rates (see website) http://www.gsa.gov/portal/category/100120	
Mileage	\$.0555/mile (or current IRS rate)	\$.0555/mile (or current IRS rate)

NOTE: Out-of-state rates apply to contract employees residing outside of Montana. Receipts are required for lodging and automobile rentals.

Itemized budgets should be constructed to include review of the operating permit amendment application under MEPA, existing scoping reports, any technical reports, and the Draft EIS. A total budget must be estimated through completion of the Draft EIS to include preliminary review of public comments on the Draft EIS.

Since the numbers and content of public comments received on the Draft EIS are uncertain, the offeror is required to identify only chargeable rates for personnel and other direct costs that may be incurred in preparing the Final EIS.

3.2.9 EIS-related documents Contractor has prepared showing knowledge and familiarity with the Montana Metal Mine Reclamation Act (MMRA) and the Montana Environmental Policy Act (MEPA).

3.2.10 Qualifications and references listed in Section 4.

3.2.11 A detailed schedule outlining the expeditious completion of the EIS review under MEPA. Offerors must submit a month-by-month schedule for project completion, which identifies all activities and interim deliverables. The schedule should identify where it can be tightened or slackened to meet specific project needs. Offerors should also demonstrate their ability to maintain quality under tight timeframes.

3.3 Provisions

3.3.1 Project Schedule.

The State is currently conducting the completeness and compliance review and expects to issue the Complete and Compliant document and Draft Amendment prior to execution of the third-party contract. The State has one year from the date the Draft Amendment is issued to conduct an environmental analysis under MEPA and to issue a Final Permit.

TENTATIVE SCHEDULE	TASK
Within 30 days of issuance of Draft Amendment	Review past scoping and previous draft environmental review documents and hold public information meeting
4 months from issuance of Draft Permit	Complete preliminary Draft EIS for internal review.
6 months from issuance of Draft Permit	Publish and distribute Draft EIS for public review.
30 days after distribution of Draft EIS	Public comment period, including public meeting.
2 weeks from close of public comment period	Review public comments and prepare scope of work and cost estimate to prepare Final EIS.
2 months from end of public comment period	Complete preliminary Final EIS for internal review.
4 months from end of public comment period	Publish and distribute Final EIS.
1 year from issuance of Draft Permit	Issue Final Permit and Record of Decision (ROD).

The contractor is expected to complete a defensible EIS. If necessary, CR Kendall will gather any supplemental data, information, and analysis and/or a change-of-scope order will be issued to the contractor to gather this data, information, and analysis.

The contractor must submit a month-by-month schedule for project completion, which identifies all activities and interim deliverables. The schedule should identify where it can be tightened or slackened to meet specific project needs. The contractor should also demonstrate its ability to maintain quality under tight timeframes.

3.3.2 Resources. The contractor will arrange any site tours by its personnel. The contractor will furnish all personnel, facilities, materials, experienced labor, and supplies (unless otherwise stated herein) necessary to complete the scope of work. The State will provide the following:

- a. CR Kendall's operating permit amendment application, studies, and previous environmental analyses, including a scoping report and a preliminary Draft EIS that were prepared in 2003. As much of this previous work as possible will be used.
- b. Access to the State's files to review any environmental and planning documents related to the Kendall Mine and any correspondence relating to the project.
- c. Preliminary alternatives identified by the State.
- d. Metal Mine Reclamation Act and MEPA statutes and administrative rules.
- e. Copies of air and water quality draft or approved permits.
- f. Any existing baseline environmental studies applicable to the proposed project and any additional information, data, or clarification relating to the proposal.
- g. Consultation and coordination with technical staff as needed and sign-off on all external correspondence and camera-ready documents.
- h. Mailing lists for public distribution of the EIS documents.

For the purposes of preparing a proposal, offerors are requested to review available information on file with the State.

3.3.3 MEPA Review (Reports, Deliverables, and Scope of Work)

The objective of this procurement is to obtain third-party contractor support to assist DEQ in the environmental review of the Kendall Mine amended closure plan under MEPA. The third-party contractor would assist in conducting a public information meeting, drafting the Draft EIS, and drafting the Final EIS, including assisting DEQ with responses to comments received on the Draft EIS and a draft Record of Decision (ROD). The purpose of the EIS is to identify the environmental impacts of the Kendall Mine amended closure plan and reasonable alternatives required by MEPA, including no action, so that the State can comply with MEPA and make an informed permit amendment decision.

DEQ has determined that the amendment application is complete and complies with the substantive requirements of the Metal Mine Reclamation Act (MMRA), relying on the environmental analysis provided in Kendall's amendment application. Based on this determination, DEQ has issued a draft permit amendment. The third-party contractor shall write the environmental analysis for the Draft and Final EISs based on information contained in the permit amendment application and draft permit amendment, although the third-party contractor shall bring to DEQ's attention any concerns the third-party contractor has regarding that analysis. . The third-party contractor may conduct additional environmental analysis needed for the EIS and not included in the amendment application. This additional environmental analysis will generally pertain to potential impacts over which DEQ does not have regulatory authority under the MMRA.

Alternatives to the proposed amendment may be developed during preparation of the Draft EIS. The third-party contractor will assist DEQ in identifying and analyzing the environmental impacts of the alternatives. These impacts would include those over which DEQ has regulatory authority and those that DEQ does not.

The EIS must be prepared in a format consistent with MEPA (Sections 75-1-101, et seq., MCA) and the administrative rules adopted under MEPA (ARM 17.4.601 et seq.).

Alternatives Analysis

DEQ believes that the issues known at this time suggest, but may not be limited to, the following alternatives:

Analysis of possible alternatives for final capping of the leach pads and waste rock dumps. Capping thickness should be analyzed to determine if the proposed plan is adequate, or if additional soil needs to be applied.

Process pads 3 and 4 were capped during the 2012 field season. The permit approves an interim reclamation measure of 17 inches of topsoil over an 18-inch bentonite-amended basal layer, lining of drainage ditches to minimize infiltration and pad drainage, and to provide effective revegetation. The EIS will analyze the effectiveness of the interim cap, and could conclude that it would remain as the final cap, or that it should be removed and a more effective barrier cover placed over the leach pads.

Analysis of areas on waste rock dumps or in the pit backfill that may need additional growth media to address inadequate reclamation success or contamination from past LAD practices.

CR Kendall's pump back systems intercept ground water, and following treatment, the water is discharged back to ground water. If the pump back systems were discontinued, then the intercepted water would in most cases report to surface waters. To comply with the more strict surface water quality criteria, continued pump back and discharge to ground water via the Kendall Pit may be necessary even after the affected waters meet ground water standards.

An alternative to continuing pump back, blending, and discharge of waters to ground water would be the installation of passive flow-through cells containing zeolite for "polishing" of this water after ground water discharge criteria are achieved, so that pump back may be discontinued. An analysis of this alternative is needed.

Additional Analysis of Impacts Required Under MEPA:

The State has reviewed the application and believes, at a minimum, the Contractor's assistance will be needed to address the following issues over which DEQ does not have regulatory authority:

Wildlife – Update the analysis of impacts to threatened, endangered, and candidate species, and species of special concern.

Socio-Economics – Update the need and use of existing structures for post mine use.

3.3.4 EIS Content Requirements

- SUMMARY (maximum of 15 pages)
- CHAPTER 1 PURPOSE AND BENEFITS OF PROPOSED ACTION
- CHAPTER 2 DESCRIPTION OF ALTERNATIVES
- CHAPTER 3 AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES
- CHAPTER 4 CONSULTATION AND COORDINATION
- CHAPTER 5 LIST OF PREPARERS
- CHAPTER 6 (or an appendix) RESPONSES TO PUBLIC COMMENTS (Final EIS only)
- CHAPTER 7 REFERENCES
- APPENDICES

3.3.5 Technical Support Documents. If needed, these documents will be prepared to document detailed technical analyses used to develop the EIS. Contractor will identify the disciplines for which technical support documents are proposed. Copies of these documents and other appropriate working papers must be delivered to the State as completed but no later than the end of the project. All technical support documentation and all graphics will also be supplied in a format compatible with Microsoft Word 2007 and as PDF files. In addition to PDF files, maps will be submitted in a format compatible with ESRI ArcGIS Version 10.

3.3.6 Quality Assurance & Quality Control

3.3.6.1 All text submitted for review and approval must be edited consistent with either the USGS Style Manual or the Shipley Style Manual supplemented with the Department's Editorial Guide. Text will be submitted in both hard copy and on CD in Microsoft Word 2007 and as a readable PDF document suitable for posting on the State's web site. Maps must be submitted in ESRI ArcGIS Version 10 or compatible format and as readable PDF documents.

3.3.6.1 It is expected that the contractor's staff will be familiar with MMRA and experienced in the preparation of MEPA documents, be capable of close coordination with agency technical staff, and be self-directed technical experts. It is expected that contractor's staff will have experience with hard rock mine projects. The State will not write the technical analysis for the contractor. Contractor's staff is expected to

analyze the data, determine impacts and develop mitigations and/or alternatives. All conclusions, determinations, mitigations, and alternatives will be finalized in consultation with the State staff prior to inclusion in any phase of the document.

3.3.6.3 The EIS must be clear and concise, internally consistent, grammatically correct, and written in plain language that will be understandable to the general public.

3.3.6.4 All text submitted must comply with a performance verification plan developed by the contractor and agreed upon by the State.

3.3.7 Text Revisions

The project schedule assumes two revisions of the draft and one revision of the final document to obtain an approved camera-ready copy of the Draft EIS. The specific number of documents and place of delivery are addressed in Section 3.3.10 below. Dependent upon the quality and completeness of the documents provided during the revision process noted above, additional review/revisions may be deemed necessary. Should that be required, the State will require draft and electronic copies in accordance with Section 3.3.10.

3.3.8 Agency and Public Meetings

The contractor will meet with the State personnel at the onset of the contract and periodically thereafter as necessary. These meetings will be structured so as to expedite the preparation of the Draft and Final EISs.

Contractor will be required to visit the mine site with key EIS personnel prior to, or during, the completion and writing of the Draft EIS. Contractor will maintain the project mailing list and project record.

Location of the public information meeting and the public meeting to obtain comments on the Draft EIS will be determined at a later date. The contractor is expected to help prepare for, attend, and assist DEQ in conducting the public information meeting and public meeting to obtain comments on the Draft EIS. This includes providing quality exhibits for all meetings and a court reporter for the public meeting to obtain comments on the Draft EIS.

Frequent telephone conversations with the State staff are anticipated. Meetings with the State staff will likely be held in Helena.

The contractor is required to meet with the State personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract. Meetings will occur as problems arise and will be coordinated by the State. It is likely a weekly update meeting will be needed that will include the contractor and DEQ employees. The contractor will be given a minimum of 3 full working days-notice of meeting date, time, and location. Face to face meetings are desirable. However, at the contractor's option and expense, a conference call meeting may be substituted. Contractor must provide a conference call line. Consistent failure to participate in problem resolution meetings (two consecutive missed or rescheduled meetings), or to make a good faith effort to resolve problems, may result in termination of the contract.

3.3.9 Supervision/Direction.

Contractor will work under the general direction of the State. Copies of all appropriate working papers and correspondence must be provided to the State.

3.3.10 Document Printing and Place of Delivery

3.3.10.1 Draft EIS

a. Two hard copies of the Preliminary Draft EIS and two electronic copies will be delivered to the State for internal review. Electronic copies must be submitted on compact disc (CD) or universal serial bus (USB) flash drive in Microsoft Word format.

b. One hard copy and two electronic copies will be required for each revision that results from the initial review. Electronic copies must be submitted on compact disc (CD) or universal serial bus (USB) flash drive in Microsoft Word format.

c. One copy of the camera-ready document and two electronic copies will be delivered to the State for sign-off. The contractor will deliver to the Montana State Printing Office one electronic and one hard-copy of the Draft EIS along with the mailing list.

d. 3.3.10.2 Final EIS

The process and number of copies outlined above will be repeated for the Final EIS.

3.3.11 Response to Comments

Contractor will be responsible for assembling, categorizing, formatting, and maintaining all comments and providing draft responses for all substantive comments received on the Draft EIS. The format for responding to comments will be determined by DEQ. Contractor will work with DEQ to refine and finalize the responses to comments for the Final EIS.

SECTION 4: OFFEROR QUALIFICATIONS

All subsections of Section 4 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

4.1 STATE'S RIGHT TO INVESTIGATE AND REJECT

The State may make such investigations as deemed necessary to determine the offeror's ability to perform the services specified. The State reserves the right to reject a proposal if the information submitted by, or investigation of, the offeror fails to satisfy the State that the offeror is properly qualified to perform the obligations of the contract. *This includes the State's ability to reject the proposal based on negative references.*

4.2 OFFEROR QUALIFICATIONS

To enable the State to determine the capabilities of an offeror to perform the services specified in the RFP, the offeror shall respond to the following regarding its ability to meet the State's requirements. **THE RESPONSE, "(OFFEROR'S NAME) UNDERSTANDS AND WILL COMPLY," IS NOT APPROPRIATE FOR THIS SECTION.**

NOTE: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found nonresponsive or be subject to point deductions.

4.2.1 References/Resumes/Company Profile and Experience. Offeror shall provide a minimum of two references that are using or have used services of the type proposed in this RFP. The references may include state or federal governments or universities for whom the offeror, preferably within the last ten years, has successfully completed environmental assessments or environmental impact statements within similar time constraints. At a minimum, the offeror shall provide the company name, location where the services were provided, contact person(s), contact telephone number, e-mail address, and a complete description of the services provided, and dates of service. These references may be contacted to verify offeror's ability to perform the contract. The State reserves the right to use any information or additional references deemed necessary to establish the ability of the offeror to perform the contract. Negative references may be grounds for proposal disqualification.

A resume or summary of qualifications, work experience, education, and skills must be provided for all key personnel, including any subcontractors, who will be performing any aspects of the contract. Include years of experience providing services similar to those required; education; and certifications where applicable. Identify what role each person would fulfill in performing work identified in this RFP.

Offeror shall provide documentation establishing the individual or company submitting the proposal has the qualifications and experience to provide the services specified in this RFP, including, at a minimum:

- a detailed description of any similar past projects, including the service type and dates the services were provided;
- the client for whom the services were provided; and
- a general description of the firm including its primary source of business, organizational structure and size, number of employees, years of experience performing services similar to those described within this RFP.

4.2.2 Method of Providing Services/Specific Staff. Offeror should provide a description of the work plan and the methods to be used that will convincingly demonstrate to the State what the offeror intends to do, the timeframes necessary to accomplish the work, and how the work will be accomplished.

The offeror's proposal must identify specific management and staff, percentage of time each will spend on the project, and their qualifications including resumes and experience in similar projects. Assigned staff members and subcontractors will be expected to participate for the duration of the project. Current and anticipated future workloads need to be described to demonstrate availability of identified staff to ensure expeditious completion of the EIS.

4.2.3 DEQ Sponsored MEPA Training. Offerors who have completed the Montana Environmental Policy Act (MEPA) training sponsored by DEQ will receive an additional 25 points added to their proposal score.

4.2.4 Offeror Financial Stability. Offerors shall demonstrate their financial stability to provide the services specified by: (1) providing financial statements, preferably audited, for the three consecutive years immediately preceding the issuance of this RFP; and (2) providing copies of any quarterly financial statements that have been prepared since the end of the period reported by its most recent annual report.

4.2.5 Conflict of Interest. For the purposes of the Montana Code of Ethics, the selected offeror, its employees and subcontractors will be a "public employee" for the duration of the project. The selected offeror, and each of its employees and subcontractors will be subject to the standards of conduct, including the code of ethics prohibiting conflict between public duty and private interest, set forth in Title 2, Chapter 2, MCA, including but not limited to Sections 2-2-104, 2-2-105, 2-2-221, and 2-2-201, MCA. Among other prohibitions, the standards of conduct prohibit the offeror and each of its employees and subcontractors from evaluating a proposal they have helped to prepare or from evaluating proposals from a company to which they have economic ties.

All proposals must include a completed Appendix D Conflict of Interest Certificate in Affidavit form regarding the economic interest of the offeror and the offeror's employees and subcontractors in the CR Kendall Corporation, and whether the data to be analyzed are data the offeror, employees or subcontractors have prepared. Data prepared for other projects may be used, when appropriate, in the evaluation of this project.

The State will review each offeror's proposal to determine whether any potential for conflict of interest exists.

SECTION 5: COST PROPOSAL

All subsections of Section 5 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

The State is seeking an estimated cost that will be inclusive of all services required under this RFP. Provide a brief overview of offeror's understanding of this project, where potential risks may occur, and how those risks may be mitigated to ensure completion of a successful EIS as defined by this RFP. In the table noted below, the State has listed the line items it believes are necessary to ensure completion of a quality final EIS. Using this as a guide, and in this format, provide a cost estimate for each line item, to include any Offeror, in their expert opinion, deem are necessary to achieve the goal of publication of a final EIS.

It is imperative that this project be complete on time and on budget. Therefore, the State must have costs for any task that may be viewed as necessary for successful publication of the draft and final EIS. DEQ will determine during contract negotiations what line items will be included in the contract. DEQ may choose to include all line items with the understanding that, if a line item becomes unnecessary, and is removed from the cost estimate, no costs will be incurred in relation to that line item.

Upon selection of a contractor, a detailed budget and schedule for completing the draft EIS will be prepared by DEQ and the Contractor, with CR Kendall's participation and concurrence.

Offerors must submit their cost proposal in the format provided below.

Item# ¹	Description	Offeror Staff	Hours	Rate ²	Total Cost
	Administration				
1.	Kick-off meeting (Internal)				
2.	Weekly meetings (with DEQ and proponent)				
3.	Weekly meetings with DEQ				
	Site visits with project lead(s) and specialists:				
4.	One site visit at the beginning of project				
5.	One site visit at later date (if needed)				
	Public information meeting (Lewistown) - all appropriate personnel				
6.	Attendance and coordination (including exhibits, handouts, etc)				
7.	Review of application and previously prepared materials (including a very rough draft of several EIS chapters)				
	Document Preparation				
8.	Summary				
9.	Chapter 1 (purpose and need, background, project area description, agency roles and responsibilities)				

	Chapter 2 (Public Involvement, previous scoping activities, Issues, development of alternatives, alternatives description, comparison of alternatives including a detailed table)				
10.	Public Involvement, Previous Scoping Activities, and Issues				
	Alternatives Evaluation – Analysis for five different alternatives including affects analysis and 3 meetings with DEQ:				
11.	Alternatives evaluated, but eliminated				
12.	No Action				
13.	Proposed Action – include proponent review				
14.	Potential agency mitigated				
15.	Potential water treatment alternative				
16.	Potential capping alternative				
17.	Meeting 1 with DEQ				
18.	Meeting 2 with DEQ				
19.	Meeting 3 with DEQ				
	Chapter 3 (Affected Environment, environmental consequences)				
	Technical memos:				
20.	Water Treatment – Evaluate proponents proposal and provide technical memo on feasibility including appropriate literature review				
21.	Zeolites – Review of past studies in application.				
22.	Cover Design – Analysis of proposed liner design and impacts				
23.	Soil Chemistry – Review, summary and evaluation of past testing – evaluation and execution of any additional testing needed.				
24.	Downstream water users agreement (addressed and analyzed in the EIS)				
25.	Air Quality				
26.	Cultural				
27.	Groundwater Hydrology				
28.	Surface Water Hydrology				
29.	Geology and Geochemistry				
30.	Water Rights				
31.	Water Quality				
32.	Geotechnical Engineering				
33.	Land Use				
34.	Visuals				
35.	Social/Economics				
36.	Soils and Reclamation				
37.	Sound				
38.	Transportation				
39.	Vegetation				
40.	Wetlands				
41.	Wildlife				

42.	Cumulative Effects Analysis				
43.	Regulatory Restrictions Analysis				
44.	Chapter 4 – Consultation and Coordination				
45.	Chapter 5 – Index				
46.	Chapter 6 – List of Acronyms				
47.	Chapter 7 – Glossary				
48.	Chapter 8 – References				
49.	Appendices (responses to comments, technical memos, visual simulations, literature reviews, supplemental data, monitoring plans)				
	Additional Tasks				
50.	Visual renderings and maps (including formatting)				
	Any coordination with:				
51.	Other State or Federal Agencies				
52.	Other DEQ program areas				
53.	Preliminary Draft EIS Reviews by DEQ:				
54.	First review				
55.	Second review				
56.	Additional review/reviews deemed necessary				
57.	Draft EIS - Coordinate printing and distribution with Montana State Printing Office				
58.	Attendance and coordination of public meeting to obtain comments on the draft EIS (including exhibits, maps, and handouts)				
	Project Record (Electronic):				
59.	All Documents PDF including all references, meeting notes, etc				
	Other Direct Costs				
60.	Travel (at state rates)				
61.	Per Diem (at state rates)				
62.	Lodging (at state rates)				
63.	Word Processing				
64.	Graphics				
65.	Photocopying				

¹DEQ is seeking costs for the detailed sub-tasks that are necessary to complete the overall task; i.e. separate costs for evaluating the five alternatives listed and the 3 meetings with DEQ rather than an overall cost for “Alternatives Evaluation.”

²Please note that staff rates must be fully loaded to include all indirect costs including benefits.

The State is also seeking costs associated with development of the Final EIS. These costs are for informational / planning purposes only and will not be scored. The State understands that these costs are estimates as they are dependent upon the number of comments received in response to the Draft EIS. Upon completion of the public comment period on the Draft EIS, a detailed budget and schedule for completing the Final EIS will be prepared by DEQ and the Contractor, with CR Kendall's participation and concurrence.

	Final EIS (in addition to above)				
1.	Compile, assemble, categorize and maintain all comments.				
	Provide draft responses for all substantive comments				
2.	First review by DEQ staff				
3.	Second review by DEQ staff				
4.	Additional review/reviews deemed necessary				
	Changes, refinements, additions to the Final EIS				
5.	First review by DEQ staff				
6.	Second review by DEQ staff				
7.	Additional review/reviews deemed necessary				
8.	Final EIS - Coordinate printing and distribution with Montana State Printing Office				
	Project Record (Electronic):				
9.	All Documents PDF including all references, meeting notes, etc				
10.	Draft ROD including a stipulations table				

SECTION 6: EVALUATION PROCESS

6.1 BASIS OF EVALUATION

The evaluator/evaluation committee will review and evaluate the offers according to the following criteria based on a **total number of 875 points**.

The **References/Resumes/Company Profile and Experience, and Method of Providing Services/Specific Staff** portions of the proposal will be evaluated based on the following Scoring Guide and Evaluation Criteria. The **Financial Stability and Conflict of Interest** portions of the proposal will be evaluated as a pass/fail basis. Any offeror receiving a “fail” for portions of the proposal evaluated on a pass/fail basis will be eliminated from further consideration. The **Cost Proposal** will be evaluated based on the formula set forth.

SCORING GUIDE

In awarding points to the evaluation criteria, the evaluator/evaluation committee will consider the following guidelines:

Superior Response (95-100%): A superior response is an exceptional reply that completely and comprehensively meets all of the requirements of the RFP. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency.

Good Response (75-94%): A good response clearly meets all the requirements of the RFP and demonstrates in an unambiguous and concise manner a thorough knowledge and understanding of the project, with no deficiencies noted.

Fair Response (60-74%): A fair response minimally meets most requirements set forth in the RFP. The offeror demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

Failed Response (59% or less): A failed response does not meet the requirements set forth in the RFP. The offeror has not demonstrated sufficient knowledge of the subject matter.

6.2 EVALUATION CRITERIA

The evaluation committee will review and evaluate the proposals according to the following criteria.

If there are sufficient qualifying responses, the State will provide the applicant with a list of no fewer than four contractors acceptable to the State, based on the evaluation criteria given below. The applicant shall provide the State with a list of at least 50% of the contractors from the list. The State will then select the EIS contractor from the list provided by the applicant (82-4-337(1)(i), MCA).

Please note that the QA/QC criteria for the final document listed in Section 3.2.6 also apply to proposals submitted in response to this RFP. The evaluation committee will regard proposals as samples of the technical output to be expected from offerors. In recent years, many proposals for other projects have quickly been eliminated from further consideration by low scores due to obvious typos, sloppy writing, and careless editing. Recognizing that much of the material in proposals will be pre-written and standardized, the evaluation committee will pay particular attention to new, project-specific sections and will be more likely to be impressed by thoughtful, carefully written and edited analysis than by glossy pictures of facilities and lists of every project ever worked on by staff members.

CRITERION	POINTS
References/Resumes/Company Profile and Experience	32% or 275 possible points
At least two references using similar services of type requested in RFP. (Government agencies and universities where offeror has successfully completed EAs or EISs within similar constraints.)	Pass/fail
Resumes, qualifications, project-related experience of each person on offeror's project team (management, technical, document production).	75
EIS-related documents offeror has prepared showing knowledge and familiarity with MMRA and MEPA. DEQ may consider knowledge and familiarity with NEPA in cases of limited MEPA experience.	100
Demonstrated ability to maintain quality under tight time frames (Quality of proposal response will be used as an indicator).	75
How long in business and providing similar services. 5+ years in business 25 points 0 to 5 years in business 10 points	25
Method of Providing Services/Specific Staff	54% or 475 possible points
Explanation of offeror's role in working with DEQ (team organization, communication, coordination).	50
Annotated outline of EIS.	50
Preparation plan (EIS format, schedule, special concerns identified or anticipated). 1) Explanation of how to identify appropriate alternatives, scope of analysis to evaluate direct, secondary, and cumulative impacts (25%) 2) List of planned and existing documents and how they will be used in EIS preparation (25%) 3) Specific management and staff, percentage of time each will spend on EIS, clear and concise commitments of personnel must be provided. Describe how present and projected workloads could limit expeditious completion of the EIS (25%) 4) Schedule for expeditious completion of EIS; month-by-month schedule; activities and interim deliverables (25%)	100

Proposal demonstrates writers' and project manager's experience with and knowledge of MMRA, MEPA, and implementing rules and court cases pertaining to preparation and content of EISs.	75
Proposal demonstrates offeror's ability to produce quality, well-written, error-free, internally consistent documents.	200
MEPA training	3% or 25 possible points
Offeror attended State training on the Montana Environmental Policy Act (MEPA)	25
Cost	11% percent or 100 possible points
Estimated cost to prepare Draft EIS: staff hours, labor rates, other direct costs (word processing, graphics, photocopying, travel, per diem, etc.). Includes an itemized budget for review of application, and of previous scoping reports, preparation of Draft EIS, public comment content analysis, and any technical reports. Total budget for Draft EIS cost not to exceed.	100 (Ratio method)
Offeror Financial Stability	Pass/Fail
Demonstrated financial stability to supply and support EIS preparation.	Pass/Fail
Conflict of Interest	Pass/Fail
Statement of economic interest in CR Kendall Corporation.	Pass/fail
Did offeror or subcontractors provide information for or prepare or assist in preparing CR Kendall's application?	Pass/fail
Total Available Points	875

Lowest overall cost receives the maximum allotted points. All other proposals receive a percentage of the points available based on their cost relationship to the lowest. Example: Total possible points for cost is 100. Offeror A's cost is \$20,000. Offeror B's cost is \$30,000. Offeror A would receive 100 points. Offeror B would receive 67 points ($\$20,000/\$30,000 = 67\% \times 100 \text{ available points} = 67 \text{ points}$).

$$\frac{\text{Lowest Responsive Offer Total Cost}}{\text{This Offeror's Total Cost}} \times \text{Number of available points} = \text{Award Points}$$

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases, or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/ProcurementServices/preferences.mcpX>.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

APPENDIX B: MODEL CONTRACT

1. PARTIES

THIS CONTRACT is entered into by and between the State of Montana, Department of Environmental Quality (the State), and (insert name of Contractor) (Contractor). This Contract is entered into in accordance with Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, chapter 5, for the purpose of providing an environmental specialist or specialists to assist the State in reviewing the permit amendment application for completeness and legal compliance and preparing an environmental impact statement (EIS) for the CR Kendall Corporation's (CR Kendall) Kendall Mine (Mine).

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1. Contract Term. This Contract shall take effect upon execution by the State and Contractor, and the effective date shall be the later of the dates of signature of the parties and terminate on 15 months from date of execution unless terminated earlier in accordance with the terms of this Contract. (§ 18-4-313 MCA.)

2.2. Contract Renewal. This Contract may, upon mutual agreement between the parties and according to the terms of the existing Contract, be renewed in two-month intervals, or another interval that is advantageous to the State. This Contract may not exceed any time limits imposed by statute.

3. COST/PRICE ADJUSTMENTS

3.1. Contractor will be allowed to request once during the initial period of the contract and once annually thereafter an increase in labor and/or direct costs. Such requests will comply with the requirements found in Section 5.1.1.1 and 5.1.1.2. New rates will not become effective until approved by the State in writing.

4. SERVICES AND/OR SUPPLIES

4.1. Contractor agrees to provide the State with technical consulting services for review of the operating permit amendment application and preparing an environmental impact statement (EIS) to disclose the potential impacts of the Kendall Mine as defined in RFP 115004, as amended and Contractor's proposal, as amended, incorporated herein by reference.

4.2. The specific services shall be assigned in task orders executed subsequent to or concurrent with this contract. The services to be provided, and the budgets for such services, shall be as described in and mutually agreed to for each task order. Contractor costs associated with developing and negotiating each task order and developing the budget estimate for each task order shall be borne by Contractor.

4.3. The budget specified in each task order shall be the maximum amount for which the State is liable under that task order. The State shall have no obligation to pay Contractor for work that exceeds the budget authorized at the time the work is performed. Any increase in a task order budget shall be authorized in a written modification to the task order, signed by the State and Contractor.

4.4. Throughout the term of Contract and thereafter, Contractor shall upon request of the State provide witnesses and documentation of litigation assistance activities performed and costs incurred under Contract.

4.5. Reference the Contract number on all invoices, packages, or correspondence pertaining to this Contract.

4.6. Authorization To Proceed. Contractor may not begin work on any services under Agreement until receipt of written authorization from the State. This authorization shall be in the form of a task order agreed to by the State and Contractor containing:

- 4.6.1.** A preamble referencing the State, Contractor, the project, operable unit (if applicable), task, and Contract;
- 4.6.2.** A description of the services to be provided (nature, scope, and extent of work to be performed), the deliverable(s) to be provided, time frame and any required due dates for performance, total cost of the services, and payment provisions in accordance with Section 3 of Contract;
- 4.6.3.** Any special conditions not covered in Contract;
- 4.6.4.** Appropriate attachments;
- 4.6.5.** Signatures by authorized representatives of both parties; and
- 4.6.6.** A Contractor submitted and the State approved Cost or Price Summary Estimate for the task order.

5. CONSIDERATION/PAYMENT

5.1. Costs. Costs for all work to be done on this project through completion of the EIS will be defined by the budgets established by Task Orders in accordance with Contractor's estimated costs identified in Attachment A attached hereto and incorporated herein by reference, for the actual and reasonable costs defined by Section 5.1.1. Contractor is not allowed to perform any work under Contract or accrue any expenses against Contract until a task order is issued pursuant to Section 4. Total compensation paid to Contractor is dependent on actual allowable costs incurred by Contractor within the scope of work and budget assigned in task orders issued under Contract. Maximum compensation amounts are based on the assumptions listed in Contractor's proposal and further negotiations with the State. If those assumptions are found to be incorrect, such that costs would be greater than agreed to in Contract, Contractor and the State shall renegotiate costs in accordance with Section 5.3. The State agrees to pay Contractor as stated below:

5.1.1. Allowable Costs. Rates shall be reasonable and necessary and shall comply with the standards set forth for allowable costs in Federal Acquisition Regulations (FAR) of the Code of Federal Regulations (CFR) 48 CFR Part 31 Subpart 31.2 "Contracts with Commercial Organizations".

5.1.1.1. Labor Rates. Labor Rates have been negotiated with the selected Contractor. The labor rates charged under Contract are loaded with actual labor rates, overhead expenses, and profit margins. These loaded labor rates must also comply with the requirements of Section 4.3. Labor rates and a list of key personnel for Contractor and its subcontractor are included in EXHIBIT I. The labor rates may be changed once annually by Contractor and its subcontractor by submitting written request and providing a new EXHIBIT I; such request may not unreasonably be withheld by the State but may require additional documentation in cases where individual increases exceed 7%. The annual labor rate changes must be approved in advance by the State prior to being authorized for use by Contractor. Effective date of the new labor rates will be designated by the State in a written approval letter but in any case may not be earlier than the date of request of such labor rate changes by Contractor which may not be more than five days prior to receipt of such request by the State.

5.1.1.2. Other Direct Expenses. Other direct expenses are all other identifiable costs that Contractor incurred directly in performance of services under Contract. Direct expenses shall be specifically budgeted in task

orders, and all direct expense costs shall be documented. Contractor warrants that there is no duplication of costs between other direct expenses and any other cost category under Contract. Direct expense categories and allowable rates are defined in EXHIBIT II of Contract. Changes in allowed direct expense rates require the same request, documentation, and the State approval as required for labor rates in Section 3. Direct expenses include the following items:

- a. Services directly applicable to Contract, such as commercial printing and binding, automatic typing equipment services, and facilities rental.
- b. Reproduction costs, such as printing, photostatting, or multilithing of reports and specifications. Photocopying shall be reimbursed at actual cost, if Contractor has provided and the State has approved the documentation for actual costs. Otherwise, reproduction costs shall be calculated at the rate of \$.05 per page.
- c. Communication expenses, such as long distance telephone, telegraph, cable, express charges, and postage other than that used for general correspondence.
- d. Transportation costs, including air and ground travel. Contractor-owned vehicles shall be used whenever possible. Contractor or personal vehicles shall be charged out at a cost not to exceed the United States Internal Revenue Service approved mileage rate then applicable which is currently \$0.555. Rental vehicles shall not be used unless determined necessary by the State. Rental vehicles shall always be the least expensive available for the shortest-term possible, if used at all. Mileage rates shall not be paid on rental vehicles. The State may authorize the leasing (the long-term rental) of vehicles in accordance with Section 4.2.2.i.
- e. Meals/lodging and other travel expenses of Contractor's employees away from their home office to perform services directly applicable to Contract. For travel within the State of Montana, the per diem rate for meals shall be as specified in § 218501(1), MCA. Actual documented expense up to the state government rate is allowed for in-state lodging. Outside of Montana, the per diem rate for meals shall be as specified in § 2-18-501(2)(b), MCA. Reimbursement for lodging costs outside the state shall be provided for actual documented costs incurred. Contractor shall ensure that all travel charges shall correspond with individual labor costs billed to the State. Lodging expenses incurred in high-cost cities or during peak summer season, if allowable, shall be reimbursed according to § 2-18-501(3), MCA.
- f. Laboratory testing and analysis costs as required in each task order
- g. Subcontractor costs charged to Contractor for services or materials that are directly applicable to Contract. Any subcontractor charges that would qualify as "other direct expenses" if they were charges of Contractor shall be subject to the terms of this Section. All subcontracted services shall be obtained in accordance with Section 7.1 (Subcontracted Services).
- h. Direct expense items not listed in this Section paragraphs a through g may be reimbursable by the State upon mutual discussion and written approval by the State prior to expenditure.
- i. Justified rental fees. Contractor shall obtain State approval of any equipment rental fees to be charged to the State under Contract. Contractor shall provide an analysis justifying the proposed rental fees, considering such factors as purchase price and purchase date, operational life, maintenance

costs, salvage value, and average annual use. Contractor shall provide the specific equation used to calculate the rental rate, and all documentation shall be submitted for approval prior to any charges being submitted for payment.

5.2. Contractor Cost Warranties

5.2.1. Contractor warrants that the loaded hourly rates charged to the State under Contract are and shall continue to be as low as or lower than those Contractor charges its most favored, similarly situated, customer for comparable services under similar terms and conditions.

5.2.2. Contractor warrants that there is no duplication of costs between the loaded labor rates charges and any other cost category under Contract.

5.2.3. Contractor warrants that the cost and pricing data it submits for purposes of negotiating the price for Contract or any future modifications, task orders, or subcontracts are current, accurate, complete, and supported by Contractor's books and records.

5.2.4. Should Contractor breach any of the warranties herein, the State may take one or more of the following actions:

5.2.5. the State may seek reimbursement from Contractor for any amount overcharged;

5.2.6. the State may deduct the amount overcharged from future payments to Contractor under Contract; or

5.2.7. the State may terminate Contract for breach pursuant to Section 15, and may seek damages from Contractor.

5.3. Budget Adjustment

5.3.1. Contractor shall use best efforts to complete the work within the budgets identified in Contract and subsequent task orders, and shall keep the State informed of progress toward that end so that budgets and/or the work effort may be controlled or adjusted through negotiated modifications, if necessary.

5.3.2. In the event the services required in any task order cannot, in Contractor's opinion, be completed within the specified budget, Contractor shall inform the State in writing in a timely manner of the additional amounts considered necessary to complete any given work element. The State and Contractor may then by mutual agreement modify the task order so that a new budget can be authorized by the State.

5.3.3. If Contractor makes expenditures or incurs obligations in excess of the budgets established or adjusted, it shall do so at its own risk, and the State is not obligated to pay Contractor beyond established or adjusted budgets. Unless otherwise notified by the State, Contractor shall continue with any parts of the work for which initial budgets remain adequate or for which adjusted budgets and/or task orders have been formally agreed upon.

5.4. U.S. Funds. All prices and payments shall be in U.S. dollars.

5.5. Payment For Services

5.5.1. Contractor shall submit a monthly billing statement to the State for services performed under Contract. The billing statement shall include the following:

- a. A separate invoice for each task order executed under Contract. Invoices shall identify actual costs including subcontractor charges incurred during the preceding billing period;

- b. An estimate of the costs including subcontractor charges that Contractor expects to be incurred during the current billing period.
- c. The following statement of the expiration date of the task order: "This task order shall expire on [date]."

5.5.2. Invoices shall itemize costs in sufficient detail to allow evaluation by the State of the reasonableness of the work and the charges. Itemized information shall include, without limitation:

- a. The Contract number, task order number, invoice number, the site name, the project name, the billing period, and a general description of the services provided during the period.
- b. Names of all personnel who worked on the project during the billing period, the number of hours worked and the applicable personnel category and hourly rates for each person, the total paid each person, and the total paid all personnel on the task order.
- c. An itemization of travel costs, indicating trip destinations, number of trips, cost of travel, meals, lodging, and total cost. Transportation costs shall correspond with personal service charges for the period. Receipts for lodging, airfare and ground transportation shall be provided.
- d. An itemized description of all other direct expenses, including a description of any equipment or services purchased, and itemization of supplies purchased when the cost exceeds \$100. Receipts for all direct expenses, except Contractor photocopying, shall be provided.
- e. The signed certificate of Contractor's authorized and responsible accounting or financial manager stating:

"This invoice is approved for (amount). I certify that it is mathematically and clerically correct, and that it is a legal, proper, and necessary charge in accordance with Contract".

5.5.3. The State shall have the right at any time to request additional documentation concerning Contractor costs, including any records required to be kept by Contractor pursuant to Section 6. The State may dispute all or a portion of any billing statement, and may withhold payment until the dispute is resolved to the State's satisfaction. The State shall notify Contractor in writing of any disputed amounts in Contractor's invoices. In the event of disputed billing, only that portion of payment disputed shall be withheld, and any undisputed portion shall be paid in accordance with the payment provisions outlined in this section.

5.5.4. If Contractor fails to comply with the recordkeeping requirements of Contract all payments may be withheld until verification of compliance acceptable to the State or until a final settlement following termination of Contract.

5.5.5. Subject to State approval of the work performed under Contract and to the appropriations and disputed billing provisions set forth above, after receipt of Contractor's invoices the State shall reimburse Contractor for the allowable costs incurred during the billing period within the time specified by law.

5.5.6. Ten percent of the total of Contract and therefore 10 percent of each invoice for work performed under Contract shall be retained by the State until the State's acceptance of all tasks and work products due from Contractor. Such acceptance shall not be unreasonably withheld. Upon written request of Contractor, the State may release up to a maximum of 50 percent of the retainage dependent on status of Contract and work performed to date of the request. In no case, however, shall the State accept the release of a percentage of the retainage greater than the percentage of work

performed. Following the State's acceptance, Contractor shall invoice the State separately for the retainage and the State shall pay Contractor the retainage within 30 days of receipt of that invoice.

5.5.7. Retainage For Faithful Performance.

5.5.7.1. The State shall retain 10 percent of each invoice until completion of all work requirements and delivery of all required deliverables. The purpose of the retainage shall be to secure Contractor's faithful performance of all provisions of Contract and any task orders issued pursuant thereto. Faithful performance shall include, without limitation, timely delivery of work products or services, compliance with the recordkeeping requirements of Contract, timely progression towards specified deadlines, and provision of all required services and work products in a satisfactory manner. The State shall not release the retainage until it determines that Contractor has successfully completed all services required by Contract and task orders.

5.5.7.2. The State may determine not to pay any or all of the retainage if it concludes that the work and deliverables required under Contract were not acceptable and in that event the State shall send written notice of such determination. Contractor shall have the right to dispute the State determination of nonperformance but may not stay payment under the Letter. Disputes arising under this paragraph shall be subject to the procedures of Section 24.

5.5.7.3. The amount of the retainage shall not constitute a measure of damages or a limit on damages to which the State is entitled for failure of performance or other breach by Contractor.

5.5.8. Key Personnel. The State shall identify which of Contractor's employees, if any, are key personnel for purposes of performing work under Contract. Key personnel shall be identified in EXHIBIT I or in a task order issued pursuant to Contract. No substitution of key personnel shall be allowed without the prior written permission of the State. Key personnel are generally Contractor's employees who provide professional and technical services in the field or in the office and whose work is directly related to the work to be performed under a task order issued by the State. Key personnel do not include administrative support staff and GIS/CAD personnel.

Contractor shall furnish the State with a resume or an experience statement with pertinent information as to education, experience with similar projects and other evidence as to qualifications for each employee that shall work directly on or for the benefit of Contract. Contractor shall not assign any employee to any task order under Contract, either initially or as a replacement, against which the State may have a reasonable objection.

5.5.9. Final Payment [§ 28-2-723, MCA]. Upon satisfactory completion of the work performed under Contract, and as a condition before final payment under Contract or as a termination settlement under Contract, Contractor shall execute and deliver to the State a release, to be effective upon payment, of all claims against the State arising under or by virtue of Contract except claims that are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in Contract, by State law or otherwise agreed to by the parties to Contract, final payment under Contract or settlement upon termination of Contract shall not constitute a waiver of the State's claims against Contractor or its sureties under Contract or against the Retainage provided pursuant to Section 5.5.6.

6. LITIGATION ASSISTANCE

Throughout the term of Contract and thereafter, Contractor shall upon request of the State provide witnesses and documentation of activities performed and costs incurred under Contract. Contractor shall be entitled to reasonable compensation for any such activities performed, except in suits or claims between the State and Contractor.

7. ACCESS AND RETENTION OF RECORDS

7.1. Contractor shall maintain books, records, documents, and all other evidence directly pertinent to performance of work under Contract and any modifications and subcontracts [hereinafter referred to in this Section as "records"] in accordance with generally accepted accounting principles. Records required to be kept as part of such documentation include, without limitation, employee daily logs, employee time sheets, employee travel authorizations, and receipts for all direct expenses, including subcontractor costs, procurement of equipment, supplies, and services, travel, rental vehicles, and lodging. Contractor's record files shall also contain all financial information and data used in the documentation of direct labor costs, direct expenses, salary and general overhead costs, and calculation of overhead rates and profit under Contract. Contractor's accounting system shall track expenses by site, by required detail of account coding by Task Order, activity, and operable unit as applicable. The system shall provide control, accountability, and an assurance that funds, property, and other assets are used only for their authorized purposes.

7.2. The State, Legislative Auditor or their authorized agents, shall have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to this Contract. Notwithstanding the provisions of the Termination Section of this Contract, this Contract may be terminated upon any refusal of the Contractor to allow access to records necessary to carry out the audit and analysis referred to above (ref. 18-1-118, MCA). Authorized representatives shall have access to records at any reasonable time for as long as the Contractor maintains the records. Audits conducted under this provision shall be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing company or agency.

7.3. The Contractor agrees to create and retain records supporting the services rendered pursuant to Section 4 of this contract for a period of three years after either the completion date of Contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

7.4. Any audit of Contractor's records during the term of Contract shall be conducted in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or audit agency. The audit shall address financial issues and assess compliance with the terms of Contract. Contractor shall furnish the State with a copy of any audit report within thirty (30) days after its issuance. If an audit determines that Contractor has failed to comply with any provision of Contract, including but not limited to the record keeping and reporting requirements, Contractor shall correct such errors or instances of non-compliance.

8. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

8.1. Subcontracted Services

8.1.1. Contractor and the State agree that no services required under Contract may be performed by a subcontractor unless Contractor and the State agree in writing. Contractor shall conduct all procurement of subcontracted services in a manner to provide full and open competition.

8.1.2. Prior to obtaining any subcontracted services in the amount of \$5,000.00 or more, Contractor shall obtain the State's written approval of the procurement method,

subcontractor, subcontract, the subcontract price and, as applicable, labor rates, overhead rates and any subcontractor fee. Contractor shall provide, if available, copies of the two most recent authorizations from the cognizant federal agency accepting the subcontractor's overhead rates.

8.1.3. Contractor shall not use cost-plus-percentage-of-cost subcontracts, but may use cost plus fixed fee subcontracts. In negotiating subcontractor fees Contractor shall follow the guidelines of 48 CFR § 15.404-4. With the State's prior written approval, Contractor may use a time and materials subcontract only if no other type of subcontract is suitable and if the subcontract includes a ceiling price that the subcontractor exceeds at its own risk.

8.1.4. With the State's prior written approval, Contractor may use a competitively procured fixed price contract for standardized services or products, such as driller contracts on a per-foot basis or laboratory analysis at standard rates. For such subcontracts, Contractor shall establish price reasonableness, based on such factors as the existence of a catalog price or of a fixed market price for products or services sold in substantial quantities to the general public, or on the regulation of prices by law.

8.1.5. For subcontracts in the amount of \$5,000.00 or more, Contractor shall certify that the subcontractor is in compliance with all provisions of Section 8, with the standard of performance, insurance, and indemnification provisions of Sections 9 and 10, and with the invoice requirements of Section 5.5.

8.1.6. Contractor shall include in all such subcontracts the following provisions in substantially the same form as contained in Contract:

- a. Access and Retention of Records;
- b. Assignment, Transfer and Subcontracting;
- c. Compliance with Laws;
- d. Conflict of Interest.

8.1.7. Contractor may submit a written request for a waiver of some or all of the requirements of this subparagraph. Requests for a waiver shall identify the justification for the waiver.

8.1.8. Contractor shall assume responsibility for the professional quality, technical accuracy, timely completion, and coordination of any work product of a subcontractor hired by Contractor.

8.2. Assignment. Neither Contract, nor any interest in Contract, shall be assigned or transferred, unless the State and Contractor agree in writing. No assignment of Contract shall be effective until the assignee assumes in writing the obligations of the assigning party, and delivers such written assumption to the other original party to Contract. Contractor's use of subcontractors or subsidiary or affiliate firms shall not be considered an assignment of a portion of Contract.

9. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, and while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, or subcontractors, except for the sole negligence of the State, under this Contract.

10. REQUIRED INSURANCE

10.1. General Requirements. The Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

10.2. Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

10.3. Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$500,000 per occurrence and \$1,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for: liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; and premises owned, leased, occupied, or used.

10.4. Specific Requirements for Automobile Liability. The Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage).

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by the Contractor.

10.5. Specific Requirements for Professional Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

10.6. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

10.7. Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A-, indicating compliance with the required coverages, was received by the Department of Environmental Quality prior to execution of this Contract. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

11. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither the Contractor nor its employees are employees of the State. Contractor and any subcontractor must comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. This insurance or

exemption must be valid for the entire term of the Contract. If the insurance or exemption used as proof of compliance expires during the term of this Contract or a renewal, Contractor shall immediately send proof of current insurance/exemption.

12. COMPLIANCE WITH LAWS

The Contractor and any subcontractor must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

13. INTELLECTUAL PROPERTY

All patent and other legal rights in or to inventions created in whole or in part under this Contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this Contract.

14. PATENT AND COPYRIGHT PROTECTION

14.1. Third Party Claim. In the event of any claim by any third party against the State that the products furnished under this Contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

14.2. Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

15. PENALTIES

15.1. Failure to satisfactorily fulfill the approved contract or portions of the contract may result in one or more of the following actions:

15.1.1. Disallowance of all or a portion of contractor expenses associated with the unsatisfactory work or late deliverable.

15.1.2. Request that unsatisfactory staff be replaced.

15.1.3. Revision or correction of unsatisfactory deliverable at contractor's expense.

15.1.4. Payment of a stipulated penalty.

16. STIPULATED PENALTIES

16.1. Contractor shall be liable to the State for stipulated penalties as described in this section when one of the failures specified in this section occurs because of circumstances that Contractor could have foreseen or controlled through the use of due diligence. Contractor shall not be liable for stipulated penalties to the extent a specified failure is caused by force majeure or delays of government agencies. A force majeure shall be a cause entirely outside the control

of Contractor or its subcontractors, which delays or prevents performance and which could not have been overcome by due diligence.

16.2. Contractor shall notify the State in a timely manner when circumstances arise that may or will involve a failure as described below. Contractor's failure to provide timely notice shall result in a waiver of the defenses of force majeure or delays of government agencies.

16.3. The following failures shall result in the assessment of the following stipulated penalties against Contractor:

16.3.1. For failure to submit deliverables within 7 days of their due date, Contractor shall be assessed \$1,000/day, beginning on the 8th day, unless an extension of time has been granted by the State in writing. Such extension shall not be unreasonably withheld if Contractor has diligently pursued and is diligently pursuing completion of the task order. Total of stipulated penalties shall not exceed total cost of the project;

16.3.2. For failure to perform tasks under a task order within 7 days of the allotted time, Contractor shall be assessed \$1,000/day, beginning in the 8th day, unless an extension of time has been granted by the State in writing. Such extension shall not be unreasonably withheld if Contractor has diligently pursued and is diligently pursuing completion of the task order. Total of stipulated penalties shall not exceed the total cost of the task order/contract.

16.3.3. Stipulated penalties assessed by the State may be withheld from future payments to Contractor. The assessment of stipulated penalties shall not preclude the State from invoking other remedies that are available.

17. CONFLICT OF INTEREST

For the purposes of the Montana Code of Ethics, Contractor and each of its employees and subcontractors is a "public employee" for the purposes of this Contract. As such, Contractor and each of its employees and subcontractors are subject to the standards of conduct, including the code of ethics prohibiting conflict between public duty and private interest, set forth in Title 2, Chapter 2, MCA, including but not limited to Sections 2-2-104, 2-2-105, 2-2-121, and 2-2-201, MCA.

If the State discovers that an employee of Contractor is in violation of this Section, the State may, after consulting with Contractor, terminate this Contract or take other appropriate measures to address the conflict and Contractor shall reimburse the State for any services the State requires be performed by another Contractor that duplicate the services performed by the employee who violated this Section.

18. DISCLOSURE

Contractor agrees to notify the State of any actual, apparent, or potential conflict of interest with regard to any individual working on a work assignment or having access to information regarding a subcontract. Notification of any conflict of interest shall include both organizational conflicts of interest and personal conflicts of interest (which are defined as the same types of relationships as organizational conflicts of interest, but applicable to an individual). In the event that a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

Contractor certifies that it has identified all current employees and proposed subcontractor's employees that have worked for the State of Montana in the last two years prior to submitting the Request for Proposal which resulted in the award of this Contract. Contractor further certifies that no former employee of the State, the State of Montana or local government may work under this Contract for a period of twelve months after voluntary termination of public employment, if by working under the Contract the employee will take direct advantage, unavailable to others, of matters with which the employee was directly involved during the employee's public employment. A former employee of state or local government may not, within 6 months following the termination of public employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former public employee was directly involved during employment. Contractor further

certifies it shall identify any new employees hired during this Contract that have worked for the State of Montana in the last two years prior to submitting the Request for Proposal which resulted in the award of this Contract. Disclosure in all cases shall include the name of the agency and the **nature** of work performed by the employee.

19. CONTRACT TERMINATION

19.1. Termination for Cause with Notice to Cure Requirement. The State may terminate this Contract for failure of the Contractor to perform any of the services, duties, or conditions contained in this Contract after giving the Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than thirty days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

19.2. Contractor understands and agrees that the State is dependent upon the permittee and state appropriations for its funding and that action by permittee or the state legislature may preclude funding Contract (and/or any task order) through the completion date stated in Section 2. In such event, the parties agree that the State may set a new completion date or terminate Contract (and/or any task order) immediately, depending upon the funding available.

19.3. Any termination of this Contract is subject to the exception that Section 7.2, relating to retention of and access to records, will remain in effect.

20. LIAISON AND SERVICE OF NOTICES

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this Contract shall be coordinated between the State's liaison and the Contractor's liaison.

The completeness and compliance review liaison for DEQ is:

Herb Rolfes
Operating Permit Section Supervisor
Environmental Management Bureau
1520 East 6th Avenue
Helena, MT 59620
Phone: (406) 444-3841
Email: hrolfes@mt.gov

The MEPA liaison for DEQ is:

DEQ MEPA Coordinator
Department of Environmental Quality
Director's Office
PO Box 200901
Helena, MT 59620-0901
Telephone: 406-444-xxxx
Fax: 406-444-4386
E-mail: **insert email**

(Insert Name) will be the liaison for the Contractor.

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:

E-mail:

The State's liaisons and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

21. MEETINGS

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or Contractual problems that may occur during the term of the Contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems may result in termination of the Contract.

22. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This Contract may be cancelled for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to cancel this Contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of Contract cancellation. Performance assessments may be considered in future solicitations.

TRANSITION ASSISTANCE

If this Contract is not renewed at the end of its term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or Contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract. If there are no established Contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this Contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

23. CHOICE OF LAW AND VENUE

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

24. SCOPE, AMENDMENT AND INTERPRETATION

24.1. Contract. This Contract consists of xx numbered pages and any Attachments as required, RFP #113006 as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

24.2. Entire Contract. These documents contain the entire Contract of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

25. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

CONTRACTOR

DATE

BY: _____
NAME AND Title

Address

Federal Employer's ID No.: NUMBER

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE

BY: _____
TRACY STONE-MANNING, Director

1520 E. Sixth Avenue
Helena, MT 59620-0901

Approved as to Form:

DATE

BY: _____
DEQ Contracts Officer

Approved as to Legal Content:

DATE

BY: _____
DEQ Attorney

Attachment A – Contractor’s Cost Proposal

EXHIBIT I

Contractor Labor Rates

Contractor Staff	Labor Rate
Subcontractor Staff	Labor Rate

EXHIBIT II

Other Direct Expenses

Expenses	Rate
Other direct expenses for preparation of exhibits, postage, telephone/fax, and supplies shall be paid at their actual rate	

APPENDIX C: CLOSURE PLAN PROPOSED BY CR KENDALL

The Kendall Mine is in an area that has been mined intermittently since approximately 1880, initially with placer operations and later with hard rock mining and cyanide mills from approximately 1900 to 1941. The current Kendall Mine is an open pit/heap process gold mine permitted and operated under Hard Rock Mining Permit #00122. Mining ceased in February 1995. Gold recovery by CR Kendall continued through the fall of 1997.

The purpose of this Final Closure Water Management Plan is to modify the existing reclamation plan to allow for long-term management of water from spent ore process pads and waste rock repositories, including:

1. Capture and temporary storage of process pad and waste rock drainage;
2. Long-term treatment of process pad and waste rock drainage with zeolites to remove thallium;
3. Disposal of spent zeolites;
4. Discharge of treated water to ground water in the Kendall pit;
5. Maintenance of ponds, buildings, pipelines, and other infrastructure needed to support the water management/treatment system;
6. Monitoring and mitigation plans for water management facilities; and
7. Augmentation of stream flows to supply downgradient water users.

The final capping of the process pads is part of the approved reclamation plan and is not modified by this Closure Water Management Plan. Similarly, the watershed flow augmentation system is approved/required by an existing Administrative Order and is not modified by this plan but is described as part of the overall long-term water management plan.

With the exception of facilities that will be retained for use in the water management system, all major disturbed areas at the Kendall Mine have been reclaimed. The process pad capping system was completed during the 2012 field season.

The following mine facilities are components of the long-term water management system and will be retained in an operational state:

1. Ground water capture/pump back facilities (wells, pumps, and piping);
2. Ponds 2B, 3B, 7, and 8;
3. Storm water control structures;
4. Water treatment and maintenance facilities;
5. Support facilities (roads, power distribution, pipelines, etc.); and
6. Land application area for contingency water treatment and discharge.

CR Kendall must augment surface water flows in the Little Dog Creek and South Fork of Last Chance Creek drainages from April 15th to August 30th, and the amount of water must equal or exceed the entire amount of water collected and pumped out of the drainages the previous year. Typically, CR Kendall exceeds the required flows in both drainages. CR Kendall also typically delivers water to these drainages for a greater time period than required.

Process pads 3 and 4 were capped during the 2012 field season. The approved permit consists of existing 17 inches of topsoil over an 18 inch bentonite amended basal layer and lining of drainage ditches to minimize infiltration and pad drainage and to provide effective re-vegetation. The proposed final cover consists of a subsoil/bentonite-amended subsoil basal layer (currently in place), with topsoil cap and geosynthetic-lined drainage ditches to reduce long-term infiltration and drainage from the process pads to an estimated annual average of less than 5 gpm.

Under the proposed Closure Water Management Plan, drainage from the process pads would continue to flow to the existing Ponds 7 and 8 for temporary storage prior to pumping to a central water treatment system at the former processing plant. At the treatment facility, the water would be temporarily stored and then treated to remove thallium via zeolite adsorption. During storage and treatment, pad drainage would be co-mingled with ground water and drainage from the waste rock ground water capture systems. Treated mine water would be

discharged to ground water via the Kendall pit. Spent zeolites from the water treatment system would be stored in Pond 7.

Ground water capture systems have been used to control seepage from the waste rock repositories, pads, and historic tailings since 1998. Operation of the existing capture systems will continue for long-term water management. These systems will capture alluvial ground water in the South Fork Last Chance Creek, Mason Canyon (Process Valley), Barnes-King Gulch, and Little Dog Creek drainages via ground water capture wells. Captured ground water will then be pumped to storage ponds and then to the water treatment site to remove thallium. During storage and treatment, captured ground water will be co-mingled with process pad drainage.

The primary parameter of concern in mine water (ground water capture/pumpback system and process pad drainage flows) is thallium. Thallium concentrations routinely exceed applicable water quality standards in all mine water sources; therefore, thallium concentrations must be reduced prior to release of mine water to ground water. Cyanide, nitrate, antimony, arsenic, and selenium are secondary parameters of concern. Concentrations may exceed water quality standards in one or more mine water sources at times. Management of water storage to achieve a thorough blending of mine waters is required to reduce the concentrations of these parameters to standards prior to release of mine water to ground water. Other trace metals (e.g., cadmium, chromium, copper, lead, silver, strontium, uranium, zinc) do not routinely occur in mine water at concentrations of environmental concern.

The proposed closure water treatment system is the current zeolite adsorption system that CR Kendall has used to treat mine water for removal of thallium since 1998. The existing treatment system consists of clinoptilolite (a variety of zeolite) in five columns with pre-treatment through a multi-media filter. Water treatment wastes (spent zeolites and filtered solids (sediment and algae)) would be disposed in Pond 7. Since concentrations of thallium, cyanide, nitrate, and other parameters in mine water are decreasing, water treatment may not be needed beyond approximately 10 to 40 years. Water treatment would cease once water quality standards and/or background levels are met. Treatment in perpetuity is not proposed.

Thallium would be removed from influent water by using the existing zeolite column system, using clinoptilolite zeolite medium. Approximately 4,000 pounds of clinoptilolite would be loaded into each column, with a typical average flow rate of 80 gpm and a typical maximum treatment capacity of 100 gpm. Higher flow rates may be accommodated with the system but would generally be avoided as higher flow rates would result in lower thallium loadings and greater zeolite consumption.

Spent zeolite material has been tested and found to be non-hazardous and non-leaching. The volume of zeolites that will be generated annually is expected to comprise less than 0.1 percent of Pond 7 volume and less than 0.02 percent of the total pond capacity. The quantity of zeolite waste generated is expected to decrease as thallium concentrations in mine water continue to decline.

The mine has a permitted land application area that has been used for treatment and discharge of mine water. The land application area is fully reclaimed and revegetated. Although use of the land application is not anticipated, it will be retained as a contingency component of the water management system. If unforeseen conditions arise, the land application area could be used for supplemental water treatment for removal of nitrogen compounds (nitrate, nitrite, ammonia, cyanide) by vegetative uptake.

The modified water balance cover pad capping system consists of the following: The soil cover cap was constructed using materials that have been previously stockpiled at various locations on site.

- Prior to placement of the topsoil layer, any erosion-caused rills or gullies in the subsoil layer were repaired. Straw wattles, which were placed on the basal layer to reduce erosion, were removed, and any basal layer material collected behind them was spread to restore positive drainage.
- All slopes to receive topsoil had a roughened surface; if necessary, the surface was scarified parallel to the slope contour, taking care not to penetrate the bentonite-enhanced layer. After the topsoil was spread, large clods and hard lumps were broken up before seeding. Documentation of soil placement depths was conducted on a nominal 100-foot by 100-foot grid over the surface and slopes of the process pads.
- The contour drainages, are lined with the 18-inch basal layer, and a geomembrane liner system consisting of a 30-mil LLDPE (linear low density polyethylene) membrane underlain and overlain by 16-

ounce non-woven geotextile. The contour drainages are armored with geotechnically and geochemically appropriate 12-inch minus riprap.

The primary support facilities for the water management system are:

1. The water treatment system, consisting of the multi-media filter system, zeolite columns, and associated buildings, piping, pumps, and controls.
2. The pumpback system consisting of wells, pumps, and piping.
3. The storage pond system consisting of Ponds 2B, 3B, 7, and 8 and associated piping.

Operation, maintenance and monitoring of the pond systems also has been conducted routinely by CR Kendall personnel for the past fifteen years and is expected to continue for the duration of the water management plan.

Routine monitoring will continue under the approved water monitoring plan. The water monitoring plan provides for monitoring of surface water and ground water throughout the mine site. Monitoring to support the water management plan will include:

- Pumpback flow rates and water quality;
- Pad drainage flow rates and water quality;
- Water treatment plant inflow and effluent rates and water quality; and
- Storage pond water quality.

The amendment application can be viewed at <http://deq.mt.gov/hardrock/default.mcp.x>.

APPENDIX D: CONFLICT OF INTEREST CERTIFICATE

(in Affidavit form)

_____, being duly sworn, deposes and says:

(1) That I am submitting this certificate in affidavit form under penalty of false swearing on behalf of _____, hereinafter referred to as "Offeror," who is submitting a proposal in response to Department of Environmental Quality RFP No. _____, which solicits a contractor to prepare an environmental impact statement (EIS) on an application submitted by an applicant for a permit, certificate, or license;

(2) That I am the _____ of Offeror;

(3) That I have made reasonably diligent inquiry regarding the finances and previous work of Offeror, the employees of Offeror, and any subcontractor and employee of a subcontractor who would perform work under Offeror's proposal;

(4) That, to the best of my knowledge, information, and belief, Offeror, each employee of Offeror who would work under Offeror's proposal, each subcontractor who would work under Offeror's proposal, and each employee of a subcontractor who would work under this proposal:

(a) has no financial or other interest in the outcome of the proposed action to be evaluated in the EIS that will be prepared by the successful offeror;

(b) has not participated in gathering the data or information submitted by permit applicant, has not reviewed the data or information for the applicant or a contractor or subcontractor of the applicant, and has not otherwise assisted the applicant in the preparation of the application;

(c) does not have a substantial financial interest in the applicant; and

(d) is not engaged as counsel, consultant, representative, or agent for the applicant.

AFFIANT

Date

County of _____

State of _____

Signed and sworn to before me this _____ day of _____, 20____, by

_____.

(Notary Seal)

Notary Public

Printed Name

Title

Residing at:

My Commission Expires: _____